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Labor Legislation

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LABOR LEGISLATION.

THESIS

BY

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INTRODUCTION.

The purpose of this paper is to give a brief survey of the more important features of labor legislation touching only slightly upon English legislation, with a view to giving an historic back-ground from which the drift and significance of modern legislation may be more easily observed.

I.

In examining the labor laws which have been enacted within very recent years in the states and territories of the United States, and comparing their extent, precision and minuteness with the statutes of a few years ago, one is impressed with the reality and extent of that remarkable revolution which has taken place in the industrial world within the past few decades.

The labor legislation of those few years in the United States and England alone covers a very significant portion of the legislation of that period,and yet,these codified laws include no portion of those numerous judicial decisions which,by establishing precedents,are in effect as truly laws as any enacted by statute or national legislation. The diversification of industry, the division of labor caused by the multitude of inventions, the combinations of capital in corporations and trusts, the organization of labor and the vastness of individual enterprises,have changed the productive forces of industry and altered the relations of man to man in a manner which could not have been dreamed of fifty years ago.

So great have been these changes,that legislative and judicial interferences are now absolutely necessary and of almost daily occurrence,which were once thought to be without the province of these departments of government. Class interests and greed, the thoughtlessness of capital with the unreasonable exactions and depressions which it is liable to inflict by its superior power and intelligence, the clamors and demands of organized labor and the mistakes due to its inferiority in power and intelligence,have transformed the industrial world into a battle field where class conflicts with class, making the peacefulness of the old rigime a chaos.[10] But it is a conflict in which already many a signal victory has been won by labor; wages have been raised,intelligence and education advanced, health promoted,life prolonged and manhood asserted. It is a conflict in which the bold and largely triumphant assertion of the rights of man is infinitely more pleasing and promising for the future of humanity than the servile submission to an unrighteous tyrany and an uncomplaining acquiescence in a degrading truce.

Notwithstanding the substantial gain to labor by legislation in its behalf,the gain is,in some re-

spects,not so real as apparent. There are multitudes of laws,but only a small fraction of them fulfill their purpose. The value of a law depends largely upon the vigor of its enforcement when newly passed. This is especially true of those laws which deviate in their provision from prevailing customs, or which seem to abridge or destroy what has been esteemed to be natural and inalienable rights. There are few laws enacted for the larger benefits and protection of humanity, or that more justly order the relations of individuals, which become absolutely inoperative or cease to be of some wholesome effect when inforced for a sufficient length of time to reveal their real justness and the substantial beneficence of their working. Notwithstanding the theory of the 'laisez-faire' reformers, good laws often hasten the ripening of good ideas. Many laws prove to be the creators of moral ideas. Laws once looked upon as unjust and as transgressing personal rights,have been afterwards looked upon as most just and necessary. The manner in which society adjusts itself to laws,which in their inception must have been galling and annoying, is shown by the unconscious ease with which one born into

the world to-day,after the legislation of centuries,lives out whole statute books,without perhaps ever knowing the restraint they impose and the requirements they demand. There is probably no law which does not in greater or less degree interfere with and limit personal and individual rights or check individual tastes; the argument therefore so often brought forward against new measures proposed,that they transgress what are called absolute rights, is decidedly weak,and unsupported by anything else, is an argument of no weight at all. Law is a growth, determined by the growth and the requirements of society, and the certainty with which the most absolute of so-called absolute and unalterable rights,once thought to be inalienable and eternal,have given way to the broader rights of society,is the best proof that in reality few or no such rights exist.

The opposition and the arguments in its support which have been made against industrial reforms, would make a very interesting study. It would reveal what astonishing deductions,considered and asserted to be logical, can be made from premises supposed to be absolutely true,but which are nothing less than egotistic and self-

ish opinion based upon self-love and greed. One cannot but reflect on the enormity of that greed,stimulated by a competitive system,of undoubted necessity to the time, but which,in the pursuit of wealth,has so far ignored both physical and moral laws,as to necessitate its curbing and hedging about by a perfect maze of legislation. It reveals the substantial gain which has been made by labor and the necessity of further care and watchfulness on the part of those who toil if in these days of industrial evolution and revolution they are to maintain their rights and secure the increasing remuneration for their labor,to which the constantly improving methods of production entitle them. Even more---in connection with recent occurrences due to our much lauded machinations of capital,credit and banking,bringing about crises once thought to move in comparatively large cycles of time, but which are increasing both in frequency and effects with our industrial advancement and increasing wealth,it suggests the doubt whether,in the existing state of things, these laws,though they be piled mountain high,can ever effectually do more than change the symptoms,leaving the disease to work its own destructive effects.

There is much talk now-a-days about class legislation,and much opposition to measures supposed to be of that brand. By class legislation,as now used,is usually meant that kind which seeks to benefit or alleviate the condition of the vast majority at the supposed expense of the small minority,--of the 999 at the fancied or real inconvenience of the one. Notwithstanding the fact that this insignificant minority has held high carnival during all the centuries of the world's history,at the expense, degradation and misery of the majority,now that in these more enlightened and Christian days,the many are asking for the resurrection of rights long ignored,a great out-cry is raised against the legislation which seeks to accomplish that end,on the grounds that it is class legislation. Much of our labor legislation is distinctly class legislation in that category,but if we go back but a few centuries in English history we shall find class legislation of another sort.

About the middle of the fourteenth century, the great plague of the "black death" having thinned out the lower classes,laborers had become few,and probably

for the first time in history,the benefit of a small supply and large demand was on the side of the laborer. He sought to take advantage of this omnipotent and omnipresent law of political economy and with what result is shown by the celebrated statute of laborers passed under Edward III. (23 Ed.III,afterwards made an act of parliament as 3 Rich.II, St.I, C. viii). By the terms of this statute every able bodied man was obliged to serve for the wages and on the terms that were usual in the five or six years preceeding the twentieth year of the king,(that is,the lowest wages before the appearance of the plague),those refusing were to be arrested and retained until they found surety for serving. Any servant departing from his service before the time agreed for was to be imprisoned. All persons paying,receiving or demanding more than the above wages were to forfeit double the sum. Certain prices were fixed for mowers,reapers,and other servants were to be sworn twice a year to observe these ordinances,those refusing to swear or to perform their work,were to be put in the stocks for three days or more. Wages of masons, carpenters and other artificers were settled and power

(a) Reeve's History of the English Law,London, 1869,vol. ii, p. 272-276.

was given to the justices of the peace to lower the rate of wages at their discretion. By a later statute under Edward III(34 Ed.III,C.x),laborers and artificers who absented themselves from their services were to be branded in the forehead with a red hot iron. Finchden,a commentator on the English law,says that "the statute was made for the advantage of the lords, that they should not be in want of servants", and Brentano says: "all statutes of laborers in the middle ages were framed with regard to the powers and wants of the landed proprietors". Under Elizabeth these laws were recodified and,though somewhat changed and largely neglected,they still remain and are now in force Even the law empowering justices to settle rates of wages still exists unrepealed,and in our own time the weavers,deeming it to their advantage,petitioned the court to fix their rate of wage by this statute,but the court of the Kings Bench,without examining witnesses of the petitioners,refused a mandamus to the parties to hear and determine(a).

(a) Rex. v Cumberland Justices,1 M. & S. 190. Reeve's History,Eng. Law.vol.iii,p.592-593 and note.

At this time by these statutes the hours of labor were prescribed not by way of limitation but by imposition(a). How much more enforceable is such a law than the present laws limiting the working day,is shown by the fact that this law was carried out to the letter,while laws reducing labor hours have always been and are still uniformly broken. Section twenty four of the act provided that any two justices of the peace or other competent magistrates,shall "appoint any such woman as is of the age of twelve years and under the age of forty years and unmarried,forth to service as they shall think meet to serve,to be retained to serve by the year,or by the week or day,for such wages and in such reasonable sort and manner as they shall think meet. And if any such woman shall refuse to serve,then it shall be lawful for said justices of the peace,Mayor or Head Officers,to commit such woman to ward,until she shall be bounden to serve as aforesaid". In the time of Richard II,servants were not to leave their "hundred" without testimonial,in case he did so he was to be

(a) Jevon's "The State in Relation to Labor", McMillan & Co., p. 35.

placed in the stocks. Whoever labored at the plough and cart till twelve years of age should thenceforth so abide without being put to any trade or handicraft(a)

This statute also fixed the wages of all classes of laborers. The language of the statute is as follows: "Also because the servants and laborers will not,nor by a long season would serve and labor without outrageous and excessive hire,and much more than hath been given to such servants and laborers in any time past so that the dearness of the said servants and laborers, the husbands and land tenants cannot pay their rents nor hardly live upon their lands to the great damage and loss as well of the Lords as all the Commons.....It is accorded that the Bailiff for husbandry shall take by year 13s:4p,and his clothing once by year at the most, the master hire 10s; the carter 10s; the shepherd 10s; the ox-herd 6s 8p; the cow-herd 6s 8p; the swine-herd 6s; a woman laborer 6s; a driver of the plough 7s at the most,and every other laborer and servant according to his degree.....And no servant &c shall take more. And if any give or take by covenant more than is above

(a) See statute 12, c. 3.

specified,at the first time that they shall be thereof attainted,as well the givers as the takers shall pay the value of the excess so given or taken; and at the second time the double value of such excess; and at the third time,the treble value of such excess; and if the taker so attainted have nothing whereof to pay the said excess he shall have forty days imprisonment". Nothing is provided however in the way of punishment or otherwise when the giver shall be unable to pay the excess.

And this statute provided further that no servant or laborer should leave the hundred or wapentake where he is dwelling,to serve or dwell elsewhere, unless he carry a letter patent showing the cause of his going and the time of his return,under the King's seal. Violating this was punishable by being put in the stocks until he found surety to return to his service.

These laws were class legislation of a very distinctive type,---legislation against a class which had already been crushed and degraded by centuries of serfdom. Jevons says: "Legislation in regard to labor has almost always been class legislation. It is the

effort of some dominant body to keep down a lower class which had begun to show inconvenient aspirations. The statute of laborers was simply a futile attempt to prevent labor from getting its proper price".

In the early years of this century the factory acts,initiated in England in 1802,provoked the most obstinate opposition on the part of factory owners and the richer classes,who profited or thought they profited,by the shameless conditions of the working people. This opposition,more or less modified,has extended through all the intervening years of progress down to the present time. In the early part of the century,children,as young as three and five years of age,were working in English factories,women and girls were employed drawing cars in the low galleries of coal mines. Labor hours were unlimited by law and were often from twelve to sixteen hours out of every twenty-four; no care was taken to protect life and limb by fencing dangerous machinery nor to furnish pure air or sufficient light in factories(a).

The factory act passed in 1802 (42 Geo.III,

(a) Walker's Polit. Econ.

C. 73) , limited the working day to twelve hours,provided for the instruction of children during the first four years of apprenticeship,and embodied certain sanitary regulations for factories. In 1833,(3 & 4 Will. iv, C. 103),nine years was established as the earliest age at which children could be employed in factories and fixing the hours of labor of children from 9 to 13 years of age at 9 hours per day(a),yet employers continued to work them thirteen hours per day,avoiding the law by dismissing one child at the expiration of the legal working day and forcing the others to continue at work. In some cases a regular tax was levied upon the employees to pay the fines of their employers for breaking the law(b). When in 1833 the ten-hour law was introduced into parliament,providing a penalty for infringement,of imprisonment only,great opposition was made(c). The arguments were that a reduction in the working day from twelve to ten hours would be an advantage to foreign competitors; elaborate arguments

(a) See Acts 3 & 4 Will.iv,chap 103.
(b) See "English Factory Legislation" p.15 et seq.
(c) Ibid,p.15

were made in parliament that twelve hours work were necessary to pay interest on invested capital,and that, if the ten hour law was adopted,a great reduction in wages would follow; yet statistics show that when the working day was reduced from twelve to ten hours,(a reduction of 1/6),the diminution of production was only 1/12,and the rate of wage gradually rose above the rate paid for the twelve hour day(a). "Unfortunately also for political economy,its professors in the Universities,in Parliament and in the press,generally ranged themselves in opposition to this legislation(b)". Their arguments were based upon wild theories about some unknown species of animal called an "economic man"; the flesh and blood species they seem to have known nothing about. They talked much about individual initiative and obstructions upon industry and interference with economic laws. The opposition made by the employing class was principally attributable to the clause relating to punishment for infringement on the law,which was imprisonment only. There was a

(a) See "English Factory Legislation" by Ernest Edler von Plener,pp.101-105,London,1873.
(b) Walker's Pol. Econ. N.Y. 1888,p.382.

direct purpose to systematically break the law; several men could be continually worked longer than the legal hours,and the fine,which was then only £1:10s,made it a profitable operation.

In 1840,the "Children Employment Commission" (a) made a report which shows that conditions had been but little improved. They reported that children from four to seven years of age,were taken to work in the mines,and that girls and women were being employed in the mines from eleven to sixteen hours per day. For this work the parish orphans were often apprenticed to work for board and clothing until twenty one years of age. The liberality of English legislators at this time may be seen from the fact that,in spite of the publication of these facts,a bill to remedy the evils failed to pass parliament. Ten years later,in 1849,Frederick Engles,who then visited England,was forced to the conclusion that only an unavoidable revolution could change the desperate condition of the working people. He found the rates of wages below the limit of decent existence,and the greed of the employing class crowding the poor wretches who created

(a) Children Employment Commission,I Mines Rep. Parl.Pap.1842,XV.

their wealth,to the verge of starvation.

At the time when the corn laws were passed, employers were simply a disorganized gang of plunderers. The excessively long hours of labor caused physical weakness,the houses were mere hovels,the food inadequate in quantity and miserable in quality. Nothing was done to prevent accidents in mines and shops. The employment of women and children in all kinds of drudgery degraded the family,crippled,maimed and stunted the laboring population(a). The extent to which women and children were employed may be seen from the proportion given in the case of textile industries in which more than 3/5 were of this class(b). As late as 1868, ten percent of the total number of workers in the textile industries of the United Kingdom,were children, and of these the larger proportion were girls(c).

Notwithstanding the slow growth of sentiment favorable to the enforcement of the early factory laws in England,those laws and other measures in the interest of labor are now enforced with tolerable vigor,much more

(a) See "English Associations of Working Men" by J.M.Baernreither,London,1889.
(b) English Factory Legislation.
(c) Ibid.

so than similar laws in America. It is interesting to note how prejudice is finally overcome and wholesome public sentiment created by just laws vigorously enforced,and how soon the good results are observed outside the nation which inaugurated the reform,when once its benefits are revealed. Reforms,once repulsive and hard-fought,spread from nation to nation,and similar laws are passed by the legislatures of other nations. The principle of the English Factory Acts has slowly extended throughout Europe. It is observable in America,Australia,and indeed in every country of the Globe where like industrial conditions exist. The cause of this spreading must lie in something beyond purely ethical ideas,since the progress of such ideas has always been a slow one. Does not the cause lie in the real economic value of these reforms? Are not men employed in factories,where the air is pure, the light sufficient,the sanitary arrangements proper,and the hours of labor moderate,better and more profitable factors in production,than the overworked and sickly operative,the unwilling victim of greed and oppression? As a mere productive machine,a man phy-

sically and mentally healthy,is more efficient than one whose physical and mental health have been impaired by overwork and unsanitary conditions. There can be no doubt of the truth of this,taking labor in general,but the argument would doubtless seldom be considered forcible,in the case of any particular employer. In general the supply of labor is so great,that it pays better in any individual case,to over-work employees since,when they are worn out,others may be obtained from among the idle to fill their places. For example,it is a common remark that street railroad companies treat their horses better than their men; the horses they are more careful not to over-work and to give them sufficient food and time for rest; if sick, they care for them; but it is cheaper to over-work employees,since,at all times the ample supply will at all times afford others ready and anxious to work. If taken sick from exposure or over-work,it is an easy matter to discharge them. One of the greatest arguments for shorter hours of labor,is that it would make labor more valuable,not only from an economic point of view,but from the basis of humane sentiment.

II

The subject of labor legislation in the United States,is so vast that no short and satisfactory summary is possible within the limits of a brief paper. We have reached an advanced and exceedingly complex stage of industrial development. Of course necessarily but few of our labor laws are national; they are principally acts of state legislatures differing in the various states and territories,and therefore to secure a thorough treatment of the labor laws of the United States would involve an immense amount of labor,necessitating a careful review of the statutes of each state and territory along the numerous lines of industrial legislation. The scope of this paper in this field will therefore,necessarily be limited. Its purpose will be to treat briefly a few of the more interesting aspects of labor legislation; to take up those subjects which have more of a popular interest,such as strikes, labor organizations,hoursof labor,etc.,which are attracting no little attention and which confront us daily in the press. Even these subjects may be more conveniently and succinctly treated by confining investigations in most cases,to a few of the older states

which have reached the fullest industrial development, and in which legislation is most comprehensive and advanced. Pennsylvania with its great mining interests, Massachusetts with its textile and other manufacturing concerns,and New York as the Empire State,in manufacture and commerce,afford the best field for state legislation in general labor and factory laws,and for the laws of strikes,boycotting,conspiracy,coercion,and special acts in favor of labor,for its protection and freedom.

First, as regards labor organizations. The principal on which these organizations receive charters from the different states is expressed in the preamble of Act 215 of the Pennsylvania Acts of 1889,which reads: "Whereas associations of capital are incorporated and protected by the laws of this commonwealth,and whereas, associations of labor should have the same privileges; therefore be it enacted etc.?" The provisions of the act following are in effect similar to those by which charters of incorporation are granted to corporations for mercantile pursuits and trade. Acts legaliz-

ing the incorporation of labor organizations,are found in the statutes of nearly all the large states,and these acts are in substance similar in the privileges allowed,viz: the improvement of conditions of employees, in employment,education,morality,etc.;to hold real estate,to maintain and defend judicial proceedings.

The United States Acts of 1885 and 1886,(Chapter 567),provides for the incorporation of associations into National Trades Unions"Associations of working people,.....for the regulation of their wages,and their hours and conditions of labor,the protection of their individual rights in the prosecution of their trade or trades". They may raise money for their protection and benefit. Some of the states have acts which declare that combinations of labor are not unlawful(a). Colorado,Maryland,New Jersey,and West Virginia have acts of this kind.

The Act of Maryland provides,that "an agreement or combination by two or more persons,to do,or

(a) See Colorado Acts of 1889,p.92; Maryland,Code of Public Laws,1888,Article 27; New Jersey, Supplement of 1886,p.774,section 30.

procure to be done, any act in contemplation or furtherance of a trade dispute between employer and workingmen,shall not be indictable as conspiracy,if such act, committed by one person,would not be punishable as an offence". The absolute justice of permitting labor to organize upon the same basis as organizations of capital,and the incorporation of these organizations under national and state laws,cannot be controverted upon reasonable grounds,--nevertheless,the frequency with which charges of conspiracy and riot are brought against leaders of these organizations,in case of strikes,has led to the embodying in the statutes of many states,a more careful and extended definition of conspiracy,with special distinctions in the application of the term,to labor organizations and labor disputes. After a definition of conspiracy,the New York Penal Code reads:(sec.170) ".....the orderly and peaceable assembly or cooperation of persons employed in any trade or calling,or handicraft for the purpose of obtaining an advance in the rate of wages or compensation,or of maintaining such rate,is not a conspiracy". The Code defines conspiracy as follows(a): "If any two or more

(a) Penal Code,sec.168, ss 5 & 6.

persons conspire,either to prevent another from exercising a lawful trade or calling or doing any other lawful act. by force,threats,intimidation,or by interfering or threatening to interfere with tools,implements or property belonging to or used by another,or with the use or employment thereof,or to commit any act injurious to the public health,to public morals or to trade or commerce,or for the perversion or obstruction of justice, or of the due administration of the laws; each of them is guilty of a misdemeanor(conspiracy)". But in section 170 it is provided that "the orderly and peaceably assembling or cooperation of persons employed in any calling,trade or handicraft for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate,is not a conspiracy".

This section 170 of the Code is a limitation upon section 168,ss. 5 and 6,and this is expressly so stated in the case of People ex rel Gill v Smith, 5 N. Y Crim. Rep. 509. "But such limitation only goes to the extent of legalizing the peaceable and orderly strike when resorted to in good faith for authorized purposes.....I cannot therefore assent to the doctrine

that section 170 authorizes a combination of individuals to compel by means condemned in section 168,all working men to join the cooperative forces or to punish those who are supposed to be inimical thereto....this section is a weapon in aid,not of compulsory organization,but of voluntary co-operation.....the facts show a deliberate purpose to impoverish and crush a citizen for no reason connected in the slightest degree with the advancement of wages or the maintenance of the rate. In execution of that purpose they also tend to show acts injurious to trade and acts preventive(threats)of the exercise of a lawful calling".

The facts of the case from which the above opinion by Judge Barrett is quoted,are as follows. One,Hart,a foreman of a factory,discharged an employee on suspicion of his having swindled the firm. Thereupon the Knights of Labor demanded of the firm that the discharged employee be restored to his position,and that Hart,the foreman,and two assistant foremen,be discharged. The men in the factory struck and refused to return to work until their demands were met. The reasons given for demanding Hart's discharge were that

he was not a member of their organization and that he had discharged one who was a member. After a time the firm were obliged to discharge Hart. The Union informed Hart that they would not permit him to obtain employment in District Assembly,No. 91, including New York City and the surrounding country for a radius of fifty miles. Hart afterwards obtained employment with a firm in a like business in Baltimore,but after being there only one day, District Assembly No. 41 of the Knights of Labor,ordered a strike of all employees in the factory until Hart should be discharged. Hart had the defendant and others arrested for unlawful conspiracy. This opinion was given on the return to writs of habeas corpus and certiorari,before submission of the facts to the grand jury. The writ was dismissed and the case was appealed to the General Term and is reported in 6 N. Y. Crim Rep.292. The latter case affirmed the former decision. The court says: "Here the proof shows that the complainant is designated by workmen as a "scab","disorganizer",and chiefly because he essays,as they aver,to reduce wages. Assuming that to be so,it should not invoke the dis-

asters of a strike".....But if this must be done to perfect an organization,or to hold it together firmly, it should end there and not resolve itself into what the law condemns,namely,a determination that the objectionable person,the "scab" so called,shall be driven away and prevented from working even for the support of his family,within a district large or small. This is a conspiracy,pronounced,and justly so,to be criminal, and is punishable by imprisonment".

A very important English statute(5 Geo.iv, C. 95) bears directly upon this point,and is more concise and clear than anything upon our statute books. It prohibits all persons from attempting by threats,intimidation or violence,to force any workman to quit his employment or to prevent him from hiring himself to,or accepting work from any person,or for the purpose of compelling him to join any club or association,or to contribute to any common fund,or to pay any fine or penalty for not doing so,or for refusing to comply with any regulations made to obtain an advance or to reduce the rate of wages,or to lessen the hours of labor,or the quality of work; but the act also declares it to be law-

ful for any persons to meet together for the sole purpose of consulting upon or determining the rate of wages,which the persons so assembling shall require or demand,or the time or hours they shall work in their respective employments,and they may enter into any agreements,verbal or written,among themselves,for the purpose of fixing the rate of wages which the parties agreeing may demand,and the persons so uniting or agreeing shall not be liable to any prosecution or penalty for so doing.

In the case of Rex. vs. Bykerdike (1 Mood.& Rob. 179) this statute was construed and the court through Judge Patterson,rightly instructed the jury that the statute did not empower workmen to meet and combine for the purpose of dictating whom their master should employ,and that such compulsion was illegal.

Section 171 of the New York Penal Code makes it a misdemeanor to compel any person to enter into an agreement not to join a labor organization as a condition of securing or retaining employment. New York and New Jersey are the only eastern states having this important provision,but,the need for such an act is

frequently shown by the arbitrary decision of corporations or private concerns,that no "union men" shall be employed,or by the order issued by the management to agents to employ only "non-union men". Even where the act exists,it is seldom or never enforced,owing to the reluctance of working men,if employed,to sacrifice their position by entering complaints and the fear of black listing,if unemployed. It is an instance of those numerous laws which might be just and salutary, but are practically dead letters,because of the impossibility of enforcing them. Complaint on the part of an employee,means the loss of everything to him, position,and possibly means of livelihood,while,in case of trial and conviction of the employer,the penalty is so slight as to be trivial and scarcely an inconvenience to the individual or corporation at fault. The penalty in this case is a fine of not more than $200. or imprisonment for not more than six months,or both. This is really a greater penalty than is usually attached to infringements of laws relating to labor. If the limit of the penalty were enforced,or if imprisonment only were provided,it would be sufficient as a

corrective force, but rich and influential citizens who are usually concerned in cases of the kind,are not imprisoned, and in the case of corporations,imprisonment is a practical impossibility. If laws are made to be enforced the option of fine or imprisonment should be removed and imprisonment made the sole penalty. Corporation law is at present in a state of unstable equilibrium and the time will probably come when a way will be devised to extend penal discipline to the responsible officers of a corporation for the wilful and intentional violating of laws where a punishment of a penal nature applies to an individual guilty of a like offense.

The theory of fines,like that of bail, is open to criticism,since it recognizes the power of money as a compensation to the state for crime committed, laws broken and trial avoided. It virtually recognizes a class to whom puhishment is meeted out on easy terms,whereas before the law all men should be equal and receive equal treatment. The imposition of a fine in one case is not equivalent,as a punishment,to an

equal fine in another case. To one individual an excessively heavy fine is a mere trifle,--no punishment whatever,--to another,a very small fine represents much and is a very grave punishment. Given such penalties attached to crimes,and state legislatures might grind out laws of this kind until the day of doom,without making material change in the abuses whose correction is ostensibly sought. As a matter of fact many of our labor laws are laws only in form. They were the work of demagogues,designed to delude the laboring people into the belief that something had really been done in their behalf. No provisions were made for enforcing them,and they are practically of no avail whatever; the only purpose they ever served was in winning favor for politicians under false pretenses.

By the laws of Pennsylvania(a),a strike is explicitly stated not to be a conspiracy. It is declared to be lawful for any laborers,either individually or as members of any society or association, to refuse to work for any person,when,in their opinion,

(a) See Brightly's Purdon's Dig. Ed. of 1885,p.1172

the wages are insufficient or the treatment of the laborer or laborers is offensive,or when the continuance of labor would be contrary to the rules of any organization of which he is a member. He must not, however,hinder the persons who desire to work. He may use any lawful means of persuasion; the use of force, threat, or menace alone is regarded as hindering others from working.

New Jersey also,has a law(a) which states that it is not unlawful for persons to unite by oath or agreement or otherwise "to persuade, advise or encourage,by peaceable means,any person or persons to enter into any combination for or against leaving or entering into the employment of any person or corporation".

In order to protect certain lines of business, such as railroad or transportation companies,whose stoppage results in great detriment to trade and commerce, we find certain laws,relating especially to strikes in those industries. Eight of the states including

(a) See N. J. Supplement of 1886,p.774,sec.30.

Pennsylvania, New Jersey, Conneticut and Deleware, have laws making it a penal offense for a locomotive engineer to abandon his engine with either freight or passenger cars attached,other than at destination,or in furtherance of any strike,to refuse to move cars or freight,either from within or without the state. Interference or molestation of employees, obstructing the track or injuring rolling stock,or preventing use by any employee is an offense.

By the laws of New York(a),a person who "wilfully and maliciously" either alone or in company with others,breaks a contract of service or hiring, knowing or having reasonable cause to believe,that the probable consequences of his so doing will endanger human life or cause grievous bodily injury or expose valuable property to destruction or serious injury,is guilty of a misdemeanor. The latter part of this law would seem to preclude the right of railroad employees to strike at all,since there is probably no time when a strike would not "expose valuable property to

(a) Rev. Stat. Penal Code,1883,p.146,sec.673.

injury",but section 675 asserts,that nothing in this code shall prevent persons from asking and using all lawful means to obtain an increase in wages. These two sections seem slightly contradictory, but the intention to afford all possible protection to all parties concerned is evident,--the protection of person and property from injury or destruction and the reservation of the right to labor of exacting the fullest terms possible.

The clearest statement of the nature of "blacklisting",and the most forcible law against it,is found in the statutes of Indiana(a). The crime, like that of 'boycotting' and 'conspiracy', is difficult to define precisely. It consists of attempting,by word or writing, to prevent a discharged employee, or one who has voluntarily left,from obtaining employment with any other person or persons. The penalty for blacklisting is not exceeding $500. or less than $100.; there is also liability in penal damages to the aggrieved

(a) Elliott's Supplement of 1889,cap.28,sec. 1615 & 1616.

in civil action. The law against blacklisting does not prevent the giving to any one,to whom the discharged employee has applied for employment,a true statement of the cause of his discharge. In Indiana, an employer, ("agent,company or corporation"), is obliged by law, to furnish discharged employees, upon demand, "a full, succinct and complete statement" of the cause of his discharge. To prevent this statement from being used in an action for libel or slander, the provision is made that it shall not be so used. This is quite a reversal of the old English law,which provided that if a workingman left his town,without a testimonial from his last employer,he was to be imprisoned until he procured one, and failing to do so within twenty one days,he was to be whipped and used as a vagabond.

"Boycott" is somewhat similar in nature to 'blacklisting', but it refers to the agreement of two or more persons,to attempt to injure the character or business of another in any manner. Parties to a boycott are guilty of a conspiracy. The boycott

would be a very effective method in forcing settlement in certain labor disputes, but it is an exceedingly dangerous method to adopt since courses must be adopted which will easily establish guilt.

By the law of Illinois(a),the penalty for boycott is the same as that for conspiracy,--$2000. maximum fine, or imprisonment for not exceeding five years, or both.

"Coercion"(b),as regards the labor question, is the compulsion by one person of another person,to do or to abstain from doing an act which he has a legal right to do or not to do. Coercion has been much involved in questions arising between employer and employee, and many special statutes have been made in various states,covering particular cases. Attempts have often been made to force the employee to relinquish certain rights at law,refusal to do so being at the risk of loss of position. In order to prevent the loss consequent on strikes,and to defeat in large measure the purposes of organized labor,certain manu-

(a) See Annotated Stats.1885,cap.38, par. 73.
(b) See N. Y. Penal Code,1883,p. 141, sec.653.

facturers have,at different times,sought to deprive the laborer of certain rights by compelling the employee to sign special contracts by which he agreed to forfeit a specific sum in wages,in case he left without giving previous notice of such intention. So,also,to avoid the liability to damages in case of accidents,laborers were often compelled to sign contracts,exempting the employer from this risk. Laws have been passed in many of the states which make the employer liable to forfeiture of an amount,equal to that named in the contract,in case the employee is discharged without similar previous notice except in general suspension or "shut-down", and the contracts as to liability for injury,are prohibited and void at law(a).

In Ohio(b), all stipulations made by the employees to railroad companies,waiving "any right whatever, are void; and forced contributions for any relief society,hospital or reading room,without the express consent of each individual laborer,are illegal.

(a) See Massachusetts Pub.Stats. of 1882,cap. 74, sec. 1 & 3. Also,Laws of Colo.Ohio,Wyoming, New York, New Jersey and Rhode Island.
(b) Ohio Acts of 1890,p.149,sec.1.

The anti-trust act makes illegal any agreement, or combination to enhance or regulate the market price of any article,or to prevent competition or limit production. That this may not be construed as an attack on labor organizations,the statutes of Michigan embody a specific exception in favor of labor; section six of the act(a),exempts labor organizations from the provisions of the anti-trust act.

To give any adequate account of the factory laws of the United States,would be impossible,except in a very long paper devoted exclusively to that subject. Our factory laws are largely a reproduction of the English factory act of 1878. Nearly all the states and territories have ample laws for the protection of life and limb of factory operatives,and the securing of proper ventilation and sufficient light. Hoisting shafts and well-holes must be enclosed by railings, and freight elevator shafts,protected on each floor, by automatic folding doors; stairways must be provided

(a) Statutes of Michigan; Acts of 1889,Act 225, sec. 1 & 6.

with hand rails,and if the inspector so orders,steps must be covered with rubber to prevent slipping; stairs must be screened at sides, and all doors must open outwardly and remain unlocked during working hours; fire escapes, of stated form and material, must be provided. Owners of factories must report accidents to the inspector for investigation; machinery and belting must be securely guarded,exhaust fans provided for dust creating machinery, and no male person under eighteen, and no woman under twenty one years of age, shall be allowed to clean machinery while in motion. Dressing rooms must be provided for women and girls.

In New York, not less than forty five minutes must be allowed for the noon-day meal,but for good cause the inspector may allow the time to be shortened,in which case,a notice to that effect must be posted in the main entrance. Factory inspectors are to be allowed to inspect all factories at any time. The factory acts must be posted in each factory. The penalty for violation of its provisions, is a fine of

not less than $20. nor more than $100. or imprisonment for not less than thirty,nor more than ninety,days,or both fine and imprisonment. Employers in mercantile or manufacturing establishments must provide seats for use of female employees(a). Children under fourteen years of age must not be employed,unless each has attended school at least fourteen weeks of the fifty two next preceeding any and every year they are employed(b). Eight hours constitutes a legal days work in New York State, but overwork for extra compensation by agreement is permitted. By this means, the statute is usually avoided; men are hired by the hour,at such a price,that a days wages necessitates ten hours work(c). Section two of the act states, that the act applies to all employed by the state,or any municipal corporation, or its agents or officers, and section four declares,that any party or parties, contracting with the state or municipal corporation, who evades the act,is guilty of a misdemeanor, and is punishable by a fine of not less

(a) N. Y. Rev. Stats.,1881,p.1089,sec.1.
(b) Ibid,p.1206, sec. 2.
(c) Ibid,p.2354, sec.1-4.

than $100. nor more than $500. and forfeiture of contract at the option of the state. It is needless to say that this law is not enforced,except in those cases where the state or municipal corporation performs their own work---as in municipal water works etc.

Complaint must be made by some employee,who, of course,would loose his position,and be black listed so far as the law allows. The fine is so insignificant, that many contractors could afford to pay it every day in the year and still make a handsome profit, by continuing to break the law. A case of the kind was recently brought to trial; a corporation doing work for one of our large cities,which approximates $1,000,000 per year, has been employing hundreds of men ten hours per day, at the regular price of common labor--$1.50 per day; this they have been doing for years,breaking every contract they have signed, for each contains a clause by the terms of which the contractor agrees to abide by this law. A few weeks ago the superintendent was brought to trial for the first time,on complaint of one of their employees. The company

(it is a stock company with a capital of $3,000,000) was fined $25. in the police court,---a peculiar fine, since it is $75. less than the least the law allows. The case was appealed to the court of sessions where the decision was affirmed,and from there to the higher courts. This interesting decision on the eight-hour law in New York, is found in the case of People ex rel Warren vs Beck,144 N. Y. 225. This case reverses the decision in the same case in 77 Hun 120 and 10 Misc. R. 77. The laws of 1870,chap. 385, secs. 1-4(Birds-eye R. S. p. 814), provide that eight hours labor shall constitute a day's work, and this shall apply to all mechanics and laborers etc., employed by the state or any municipal corporation therein, through its agents or officers, or in the employ of persons contracting with the state or such municipal corporation for the performance of public works. It is further provided that any parties contracting with the state or any municipal corporation therein who fails to comply with this law, or secretly evade the provisions thereof,by ex-

acting and requiring more hours of labor etc.,shall be deemed guilty of a misdemeanor, and fined not less than $100. nor more than $500. and in addition thereto shall forfeit such contract at the option of the state.

Within the spirit of this general law,a clause was inserted in the charter of the city of Buffalo(sec. 504, Ch. 105, L 1891),which reads as follows: "In contracting for any work required to be done by the city, a clause shall be inserted that the contractor submitting proposals,shall bind himself in the performance of such work,not to discriminate either as to workmen or wages against members of labor organizations, or to accept any more than eight hours as a day's work, to be performed within nine consecutive hours. Nor shall any man or set of men be employed for more than eight hours in twenty four consecutive hours except in case of necessity, in which case pay for such labor shall be at the rate of time and one-half for all time in excess of such eight hours".

The Barber Asphalt Paving Co.,a West Virginia

corporation, made a contract with the City of Buffalo in which the above clause appeared. Some hundreds of men were habitually employed by the company on the work for a regular day of ten hours, and the superintendent of the company was arrested and fined under the statute for a misdemeanor. The case was appealed on the ground that the said provisions as to an eight hour day,was a violation of Art. 14, sec. i of the United States Constitution,which reads as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States",and also section I, Article I of the New York Constitution reading as follows: "No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers". This was the sole ground of error alleged. The conviction was affirmed by the general term. A writ of habeas corpus was sued out but was dismissed by the special term of the superior court,and that de-

cision was affirmed by the general term,and from the latter an appeal was taken to the court of appeals for the express purpose of testing the constitutionality of the law.

The court of appeals held,however., that in the appeal it was unnecessary to consider the constitutional question sought to be presented. That the clause in the charter of Buffalo was wholly administrative in its nature and not penal in its nature, that it merely directs in detail the manner in which contracts shall be drawn with the city, "nor does it impose upon any one entering into a contract with the city any duty or obligation whatsoever"......"We are not called upon at this time to decide the legal effect of the alleged violation of these provisions by the Paving Company. We do hold however, that this clause does not in any way apply to the relator(the superintendent of the company),and that his arrest,trial and conviction were without jurisdiction and void. We are also of opinion that this clause cannot be the basis for the

criminal indictment of any person for a misdemeanor".

This was a very unsatisfactory determination of the question for both parties concerned. If the clause in the charter is not penal in itself, it is difficult to see how the offense escapes the provisions of the general law(ch.385, L 1870,cited above), and still more difficult to see how it escapes being a misdemeanor in any event by force of section 155 of the Penal Code, which latter reads as follows: "Where the performance of any act is prohibited by a statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a misdemeanor". The word "statute" in this section of the Code,is held in Mayor vs Eisler, 2 Civ. Pro. 125, to include a municipal ordinance.

The laws thus far referred to, constitute but a small fraction of the labor laws of the United States, but in the light of history,even these few laws reveal a wonderful progress not only in the sense of justice, but in moral ideas,-if not on the part of individuals

interested, still on the part of the state, which in America at least, represents the sovereign people. The rights of labor have, in some degree, been recognized, while in former times, the laborer was an animated chattel, a sort of animal to be bought and sold, to be both used and abused. This progress has not, to any great extent, been the result of natural evolution. The laborer has little need to thank any one but himself for the good work accomplished. It is the fruit of his own toil; it is the result of a manly and courageous self-assertion, accomplished by constant agitation. The chief instrument has been the much derided labor organization,--derided principally where it is most feared. The aphorism, "In union there is strength", has been demonstrated to be true, with regard to labor, as with regard to all else in human affairs.

Notwithstanding the foolishness of mis-lead public sentiment, and the editorial bugaboos, renewed on the occasion of every strike, the value of labor organizations, in securing better wages and promoting

the interests of the laboring classes, is beyond compute. The strength and power which these organizations have developed in England, since the repeal of the laws prohibiting combinations, in 1824, is one of the most significant facts in the history of that period, and, to a lesser extent, the same is true of organizations in the United States. The strike, though not the object of these organizations, but the extreme to which lawful coercion may go, has accomplished much, but the organizations have also gained by prestige of power, just as powerful nations accomplish much, not only by actual warfare and conquest, but by inherent military and moral strength.

However unpleasant it may be for the more intelligent workman to tie himself down to a labor organization, the ultimate good of the laboring man, consists in doing that very thing. Association and organization, for the furtherance of particular objects, is the order of the day; it embraces all relations of life, and its work has been powerful and, on the whole,

beneficent. In these days of combining capital in irresponsible corporations, the only hope of labor is in combination. As progress is made in economic science and its principles are better understood and diffused, the real economic advantage of these agitations is recognized.

The economic advantage of active competition, on the part of labor for higher wages, for example, is now recognized by the best authorities in political economy. The great principle of our very imperfect social system, is competition, and the more perfect that competition, in all its branches, the more fairly adjusted is the mechanism of distribution. The principle of labor legislation is not hostile to the free play of competition, labor legislation rather tends to make competition between labor and capital possible. The hostility so often made to "state interference", as it is called, on the ground that it is paternal and tends towards socialism, seems ludicrous enough, in view of the substantial paternalism which the state has been

obliged to adopt, to secure the very existence of its working population against the encroachments of blind and often irresponsible greed. Whether for good or ill, state paternalism is on the increase yearly; things even seem to be drifting beyond mild paternalism toward much-hated and much-misunderstood socialism; it is common to find articles in our periodicals,bewailing this draft, and, quite as often, one may see reform measures disposed of by tagging them, in lieu of argument, as "socialistic".

To brand a thing as "socialistic" is no argument whatever against it, on the contrary, if no better reasoning can be deduced,--if the logic of the case is summed up in the term "socialistic", it is the best possible refutation of the idea that there is anything objectionable with the measure. A supposed reform ought neither to be favored or disfavored because socialistic; considerations of justice,reason,public good and equity should alone have weight; there is a unity in these as there is a unity in truth; one cannot con-

tradict the other.

No one need fear being inveigled into socialism: if just legislation leads toward socialism, it is nevertheless a goal, and if the righteous working of these forces evolve the socialistic state, no better proof could be desired that such was the true good of mankind, and socialism the true solution of economic and social problems.

Cornell University,
Ithaca, May 1st.,1896.

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